

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DONNIE E. WOLFE, JR.,

Plaintiff,

vs.

MPW TRANSPORTATION SERVICES, LLC,

Defendant.

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Case No. 2:19-cv-4010

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, Defendant MPW Transportation Services, LLC (“Defendant”), files this Notice of Removal (“Notice”) to the United States District Court for the Western District of Missouri, Central Division. Removal is proper based on the following grounds:

I. Procedural Background

1. On or about September 13, 2018, Plaintiff Donnie E. Wolfe, Jr. (“Plaintiff”) initiated a civil action captioned *Donnie E. Wolfe, Jr. v. MPW Industrial Services, LLC*, Civil Action No. 18BE-CC00039, by filing his original Petition (“Original Petition”) in the Circuit Court of Benton County, Missouri (the “State Court Action”).

2. Plaintiff’s Original Petition filed on September 13, 2018, alleged that Defendant retaliated against him for exercising his rights under Missouri’s Workers’ Compensation Law, R.S.Mo. § 287, et seq. On October 30, 2018, MPW Transportation Services, LLC was substituted as the proper Defendant in place of MPW Industrial Services, LLC. On December 5, 2018, Plaintiff filed a Motion for Leave to File First Amended Petition (“Motion for Leave”). The Circuit Court of Benton County, Missouri, (the “Circuit Court”) granted Plaintiff’s Motion for Leave at

the Case Management Conference held the same day. Defendant filed its Answer to Plaintiff's First Amended Petition on December 10, 2018. On December 19, 2018, Plaintiff filed an Amended Motion for Leave to File Second Amended Petition to assert federal claims under the Americans with Disabilities Act, 42 U.S.C. § 12203(a). On January 2, 2019, the Circuit Court sustained Plaintiff's Amended Motion for Leave to File Second Amended Petition, the Second Amended Petition was filed instant, and Defendant was granted thirty (30) days to respond to Plaintiff's Second Amended Petition. Plaintiff's Second Amended Petition alleges the following causes of action against Defendant: (1) Count I: Workers' Compensation Retaliation in Violation of R.S.Mo. § 287.780; (2) Count II: Hostile Work Environment in Violation of the Americans with Disabilities Act 42 U.S.C. § 12112(a); and (3) Count III: Retaliation in Violation of the Americans with Disabilities Act 42 U.S.C. § 12203(a).

3. The Civil Cover Sheet associated with this Notice is attached hereto as Exhibit A.

4. True and correct copies of all the process, pleadings, and orders in the State Court Action that have been filed in the State Court Action are attached hereto as Exhibit B.

5. Pursuant to 28 U.S.C. § 1446(b)(3), this Notice of Removal is timely filed within thirty (30) days after the Circuit Court granted Plaintiff's Amended Motion for Leave to File Second Amended Petition and within thirty (30) days of the filing instant of Plaintiff's Second Amended Petition. *See* Exhibit B.

6. The Defendant has not filed an Answer or other pleading in the State Court Action in response to Plaintiff's Second Amended Petition.

II. This Court has Federal Question Jurisdiction.

7. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, which provides that federal courts have original jurisdiction over "all civil actions arising under the

Constitution, laws, or treaties of the United States” (“Federal Question”).

8. Plaintiff’s Second Amended Petition raises a Federal Question in that it expressly alleges that Defendant violated multiple sections of the ADAAA. The ADAAA is clearly a law of the United States. See Exhibit B, Second Amended Petition at ¶¶ 47 – 64.

III. Venue is Appropriate in this Court.

9. Removal to this court is proper pursuant to 28 U.S.C. § 1441(a) because this Court is the federal district court embracing the Circuit Court of Benton County, Missouri, where the State Court Action was filed. Removal to the Central Division of this Court is proper pursuant to Local Rule 3.2.

10. Defendant submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff, including, but not limited to, improper service of process, improper venue, lack of personal jurisdiction, or Plaintiff’s failure to state any claims upon which relief may be granted.

11. A copy of this Notice of Removal and exhibits hereto have been served upon Plaintiff, and, together with a Notice of Filing of Removal, will be filed with the Clerk of the Circuit Court of Benton County, Missouri.

WHEREFORE, Defendant prays that further proceedings in the Circuit Court of Benton County, Missouri, be discontinued and that said Case Number 18BE-CC00039, now pending in the Circuit Court of Benton County, Missouri, be removed to the United States District Court for the Western District of Missouri, Central Division, and that such Court assume full jurisdiction of this action as provided by law.

Dated: January 18, 2019

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ James R. Ward

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January, 2019, a true copy of the foregoing Notice of Removal was filed with the Clerk of the Court using the CM/ECF system, with a copy sent via electronic mail and via first-class U.S. mail, postage prepaid, to the following counsel of record for Plaintiff:

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ATTORNEYS FOR PLAINTIFF

/s/ James R. Ward

AN ATTORNEY FOR DEFENDANT